IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2616 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAK UMEDBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2616 of 2001

MR DC SEJPAL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

MR RC KAKKAD for Respondent No. 2

NOTICE SERVED BY DS for Respondents No. 2,3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 01/02/2002

ORAL JUDGEMENT

Learned advocate Shri Sejpal appearing for the

petitioner seeks leave to delete respondent No. 3. Leave to delete respondent No. 3 is granted.

2. Rule. Service of rule is waived by learned AGP Shri K.L. Pandya for respondent No. 1 and learned advocate Shri R.C.Kakkad for respondent No. 2.

3. The petitioner was appointed by the respondent University as a daily wager to a class IV post by an order dated 21.4.1994. He was continued on ad hoc basis from time to time. Upon perusal of different orders, it appears that the petitioner had also worked as a Laboratory Attendant for some time. Service of the petitioner came to be terminated and, therefore, he has approached this Court with a prayer that the order of termination should be quashed and set aside. Incidentally, it has also been submitted by learned advocate Shri Sejpal for the petitioner that persons junior to him have been regularized whereas the petitioner has not been given regular appointment. It has been also stated that certain posts in class IV cadre are vacant where the petitioner can be accommodated. In fact, the petitioner has already submitted his application dated 6th July 2001 to respondent No. 2 so that his case can be considered for appointment to any class IV post.

4. In pursuance of notice issued by this court, learned advocate Shri R.C. Kakkad appearing for the respondent University has submitted that the petitioner was appointed from time to time on ad hoc basis with a clear understanding that he would be relieved when his services would not be required. It has been submitted by him that the petitioner has no legal right to continue because his services were not required. It has been also submitted by him that in fact service of the petitioner had been terminated before he approached this court, but the order of termination was not accepted by the petitioner.

5. On the other hand, the petitioner's case is that as per circular dated 28/29.6.2001, several vacancies in the class IV cadre are in existence and in view of the said fact, the petitioner should not have been relieved. In fact, the respondent authorities require services of the petitioner, but the petitioner was not continued. He has also submitted that persons junior to the petitioner have been continued in service and have also been regularised.

6. Upon hearing the learned advocates and upon

perusal of the papers pertaining to the case, it appears that there are vacancies in the class IV cadre and the petitioner has already applied for the post of a peon. It is also clear that the petitioner has been working since 25.4.1994 under the respondent University. The respondent University, in the affidavits filed, has said nothing with regard to misbehaviour or unsuitability of the petitioner and, therefore, there does not appear to be any reason for terminating service of the petitioner.

7. Looking to the said facts, it is directed that the service of the petitioner shall not be terminated except in accordance with law and till persons junior to the petitioner are continued in service. It is also directed that the application submitted by the petitioner dated 6.7.2001, which is at page 47 of the paper book, should be taken into account while giving appointment to the persons in class IV cadre.

In view of the above directions, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

(A.R. Dave, J.)

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